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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION BY ADAMAN MUTUAL WATER COMPANY FOR APPROVAL TO ISSUE STOCK

Docket No. W-01997A-09-0297

CLOSING BRIEF

The first issue to be addressed by the court, and to be determine by the court, would seem to be whether a reorganization has indeed occurred or not. The members of the board of the Adaman company, and its counsel, have taken the position that a reorganization has already occurred by virtue of the vote of 4/7/09.

A.R.S. §10-3203 states that an incorporation will become effective upon filing of the incorporation paper or upon its effective date. Although there does not appear to be an A.R.S. specifically addressing the effective date of a reorganization, it would seem logical that when an effective date is included in the instrument submitted to the court that that effective date would seem

to determine the date at which the reorganization comes in effect.

The second point to be addressed is the inconsistency between the instrument submitted by the applicant in the January 12, '09, and June 12th amendment, that instrument including both an Application for approval to issue stock and exhibits attached to the application. The first exhibit is an agreement and Plan of Reorganization which has four pages. (Exhibit 1)

The second page describes an "Effective Time." This "Effective Time" is different than the "Effective Time" which was voted upon and agreed to by the voters on 4/7/09.

The Agreement, as submitted by the applicant, reads, "This Agreement shall become effective upon the last to occur of: (1) Approval of this Agreement by the Board of Directors; (2) approval of this Agreement by a two-thirds majority of a vote cast by members; or (3) the filing of the Amended and Restated Articles of Incorporation with the ACC (the "Effective Time")."

This differs from the Agreement signed by the members either by proxy or at the meeting of 4/7/09. Thus, since the instrument used to substantiate the application is incorrect, it is deemed to be invalid. The Agreement, signed by the membership of the current

corporation, included a very significant provision and condition which could not be ignored. (Exhibit 2)

This is significant in that the counsel of the board relied heavily upon this condition in order to obtain the vote of the membership, as stated in a memorandum dated April 3rd, 2009, page 3, "In fact, our legal counselor has told us that the ACC must approve the Plan of Reorganization before it can be implemented. Consequently, if the plan is approved, we will submit the Plan to the ACC for its approval." (Exhibit 3)

We hold that no individual person, no group of persons, as well intended as they may be, can devine what a person's vote would have been, had that condition not been part of the agreement. The right to vote is a quasi-sacred right, and a voter has the right to know what they are voting for and what conditions do or do not exist upon that vote. Once a condition has been placed upon the vote, it cannot retroactively be removed without a new vote occurring.

Thus, on that basis, we hold that the vote held on 4/7/09 cannot be used as a supporting document for the application submitted in January and June of '09. In the same way, since one vote by the voter was a vote for three different issues: A vote for the Plan of Reorganization, a vote for the Restated Articles of Incorporation, and a

vote for the new Bylaws, we hold that the previous Articles of Incorporation and previous Bylaws continue to exist.

In some manner, a confirmation that the Board of Directors seems to agree with the above is the fact that in violation of the Proposed Restated Articles of Incorporation, no corporate audit has been performed for the 2009 year. Further, Adaman Mutual Water Company did not file corporate taxes in April of 2010, but rather filed the 990 nonprofit forms.

In further contest to the vote, we submit the fact that a signature is normally held to be valid for a period of one year. At this time, without completion of the reorganization, we are approximately 17 months after the vote of 4/7/09.

In addition, a substantial number of votes had been obtained by proxy votes. (Exhibit 4)

A.R.S. §10-3724, paragraph C, states that the appointment of a proxy is effective for 11 months unless a different period of time is expressly provided in the appointment form per se. Thus, the purpose of the votes submitted by proxy, 4/7/09, not having come to fruition by September of 2010, some 17 months after the submission of the proxy votes, these votes are held to be invalid. As in the case of votes cast in person on 4/7/09, these votes

were also submitted subject to the agreement described above and, thus, these ~~proxy~~ as well as the proxy votes votes cannot be used to substantiate the applicant's request for issuance of stock.

The vote of 4/7/09 is further undermined by noncompliance with A.R.S. §10-3721 which specifies "unless the Articles of Incorporation or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members." A.R.S. §10-3708, paragraph D, section 2, specifically states that in the case of a written ballot, the ballot shall "provide an opportunity to vote for or against each proposed action." The membership was not given the option of voting for or against the Plan of Reorganization, for or against the Restated Articles of Incorporation, or for or against the new bylaws.

In this way, the voters were coerced to vote not only for a Plan of Reorganization, which the electorate had been told was necessary, but to also vote for Restated Articles of Incorporation and new bylaws which many did not agree with.

However, having been told vociferously by the board's counsel that this was the only way that any fund could be distributed to the membership upon dissolution of the company, many voters opted to vote for the package

rather than receiving nothing at all.

Even though these matters were related, i.e., the Plan of Reorganization and the Articles of Incorporation and bylaws, agreement with one should not necessarily infer agreement with the other. In this case, no option was given to the voters, in violation of the above-named statutes for written ballots and proxy ballots.

Indeed, this was a major point of dissession at the meeting of 4/7/09, with many attendees requesting of Mr. Brophy that they receive their share of the company equity upon dissolution. Mr. Brophy vehemently denied that anyone had any right to any distribution, whatsoever, upon dissolution of the company.

The applicant uses §10-11003 to support its application. Paragraph 4 of that statute states that the members' meeting will occur in accordance with §10-3705. There are other contingencies which attach to §10-11003, pertaining to the meeting per se. Some of these legal obligations have been specifically and willfully violated by the board.

In particular, A.R.S. §10-3720 mandates that a members' list be maintained, including name, address, and number of votes allowed per member (not number of acres owned, but number of votes recognized by the board).

Further, a member or member's agent or attorney may inspect and copy the list during regular business hours at the member's expense.

This was specifically denied, upon a verbal and written request, prior to the meeting of 4/7/09. In response to the same request in 2010, a list of parcel numbers and number of acres, as well as the name of the owner was provided in 2010. At least 50 percent of these parcel owners are commercial entities and yet it is not stated whether all of these commercial entities were allowed to vote or not. (Exh. 5)

There are two issues to be addressed here: First of all, adherence to §10-3720 is not elective, it is a law. At the hearing, Mr. Dave Scofield, speaking for the Board, indicated that, for reasons of privacy or any other reason, the board did not feel that they should release contact information.

Even though the purpose of obtaining the list was made clear, in particular, that it was not for commercial use, but rather for communication among members, as indicated in §10-3720, an appropriate list was specifically denied. Thus, it has been impossible for us to know whether our board members, who all own large commercial ventures on the land for which they claim votes, i.e. Mountain Shadows Dairy, Evercrisp Vegetable Company, Evercrisp Cooling (same owner as Evercrisp

Vegetable Company), Wildlife World Zoo, et cetera, are eligible to vote legally.

At the hearing, Mr. Scofield announced to all of us, who were unaware of this, that the Board of Directors had apparently filed a resolution by which they were going to accept every vote unless that vote was challenged. One, therefore, has to assume that there's a basis for challenge.

In November of '08, when I first realized that most of our board members were owners of large corporations and were operating these corporations on the land for which they were claiming votes, I indirectly attempted to find out if commercial entities were allowed to vote, in a letter addressed to the board suggesting "a temporary moratorium on further annexation to the company until we have determined how to deal with large commercial parcels so that one or two commercial entities don't determine the fate of our company." (Exhibit 6)

The response I had anticipated was commercial enterprises are not allowed to vote in a mutual water company. I believe this is the same case as exists with at least some of the companies of the Salt River Project conglomerate. However, at the hearing, despite several questions addressed to Mr. Scofield with respect to the eligibility of commercial entities to vote or not, the

court was not informed as to whether or not these commercial entities are actually eligible by law to vote, but was told rather that the board had determined that unless a vote was challenged, the board would accept all votes submitted. This would seem to be likely, as the four board members most adamant about this reorganization own commercial enterprises.

In passing, one of our directors, Mr. S. A., who has already moved out of the district and whose land is 100 percent for sale, would normally be leaving the district, taking nothing from it, if the current company were dissolved any time in the future. Under the proposed corporation, however, Mr. S. A. would either buy preferred shares or be given preferred shares, since according to the proposed bylaws, preferred shares can be issued at the will of the board and declared paid in exchange for service or for whatever reason the board decides to declare the shares paid. Mr. S. A., should the company be dissolved in the future would receive part of the equity of the company in the preferred fashion as described in the new proposed Articles of Incorporation.

These proposed Articles of Incorporation, Article 11, titled "Dissolution and Liquidation" states "upon dissolution or liquidation of the corporation, the Board of Directors shall ... distribute any and all

surplus capital or assets thereof to those persons who are shareholders of the corporation at the time of such dissolution, in proportion to those ownership of shares as to the date dissolution is effective, subject to any liquidation preference granted to the holders of preferred stock." In short, if the company is sold for five to seven million dollars, Mr. S. A., having left the company, would receive a good portion of the benefits of the condemnation.

The holders of common stock, those individuals who initially put the company together and financed it, through assessments, as a mutual company, may receive compensation if the board decides to give them any compensation, but they have no rights to any interest in the equity of the company, whereas the holders of preferred shares specifically will have rights to the assets of the company upon dissolution. In fact, this proposed reorganization is nothing but a privatization of profits and a privatization of equity which has previously been held by a nonprofit mutual benefits entity.

With respect to privatizing both the profits and the interests of the equity of the company, this type of reorganization is probably the best. However, this reorganization is absolutely not in the best interests of the current shareholders.

With respect to "public interest" and the interests of the "company," the Corporation Commission must limit its consideration to the current shareholders of the company, the holders of common stock. We are the members of the company; at this time, the only members of the company, with respect to "public interest," as our operations create no pollution affecting the general public; take nothing from the general assets of the community outside our water company, since our aquifer recharges itself; and since we have operated as an independent, freestanding corporation. Public interests must be defined as the interests of the company and its members as it exists now, not as it is proposed to be changed. The planned reorganization is absolutely not in the interests of either the current members or the company.

This reorganization has been sought under misrepresentation of facts of law by Mr. Brophy and Ms. Van Quathem and the members of the board. It is, in fact, actually, perhaps more of a conspiracy to defraud, rather than an attempt to reorganize.

Further, even if an attorney general's opinion were to state that this reorganization can be done in this fashion, the attorney general is not the person to determine whether this can be done in a tax-free way

according to the IRS -- only the IRS can determine that. Not only is the attorney general's opinion, referred to by the applicant, completely irrelevant to the case at hand but the extrapolation made by the applicant is almost laughable. This decision, issued at the request of the Arizona Corporation Commission, in 1962, states that a for-profit corporation can be legally amended to become a nonprofit corporation. (Exhibit 7)

The applicant submits that that being the case, the corollary should be the case, i.e., a nonprofit corporation can be amended to a for-profit corporation. The assumption in the former case would be that the for-profit corporation has paid all of its taxes as a corporate entity -- income tax, capital gains tax, et cetera. As a nonprofit corporation, capital gains are not taxed. In a reorganization from a nonprofit to a for-profit corporation, the assets of the nonprofit corporation are deemed to be income to the new corporation and are normally taxed.

With the proposed reorganization, wherein a completely new class of shares is allowed, even though approval for issuance is not requested at this time, the fact that the new class of shares, that being of preferred shares is allowed, takes away from the requirements for tax-exempt status of the reorganization.

The current stockholders would be expected to become minority stockholders and their equity in the company is not only diluted, but according to the Proposed Restated Articles of Incorporation are extinguished. That fact, in itself, could be held legally, in the future, to have given the new or proposed for-profit corporation all the rights of a for-profit corporation, including that of issuing preferred shares; so the Corporation Commission would be at a loss to find reason to deny approval of the issuance of preferred shares.

As previously mentioned, preferred shares can be sold or given to anyone, within or without our district, in exchange for anything including service or for whatever consideration the board may choose to give its preferred shares to. In fact, these preferred shares represent part of the equity in the company. At this time, the equity in this company is owned completely by the members. Again, the creation of these preferred shares do nothing but transfer ownership of the company to a select few who will be able to either buy or give each other the preferred shares.

The Arizona Statutes don't address reorganization of a nonprofit very specifically, other than §10-11008, entitled "Amendment Pursuant to Reorganization", paragraph A, which seems to imply that a

reorganization can be done by a court of competent jurisdiction. This could be taken to imply that a reorganization might require a court approval. This indeed was the case for many years in most states. A clarification from the attorney general, with respect to this, might be helpful.

The Statutes do address mergers, which to some extent have, in the IRS literature, come to mean essentially the same as a reorganization, in that a new for-profit company can be formed and the nonprofit merged into the for-profit corporation. In this case, however, as described in §10-11102 and §10-11103, there are limitations as to the number of members and interests which may emerge as part of the surviving corporation.

§10-11101 specifies that one or more nonprofit corporations may merge into a business or nonprofit corporation.

§10-11103, paragraph G, (Exhibit 8) states that, unless the Articles of Incorporation otherwise require, action by the members of the surviving corporation in a plan of merger is not required if all of the following conditions exist: (1) The Articles of Incorporation of the surviving corporation will not differ except for the amendments enumerated in A.R.S. §10-1102 from the Articles of Incorporation before the merger; and

(2) each member of the surviving corporation who was a member immediately before the effective date of the merger will hold the same number of memberships with identical designations, preferences, limitations, and relative rights immediately after the effective date of merger; (3) the number of voting members existing immediately after the merger, plus the number of voting memberships issuable as a result of the merger, will not exceed more than 20 percent of the total of voting memberships of the surviving corporation existing immediately before the merger; and (4) the number of memberships, if any, that entitle the holders of the membership to participate without limitation and distribution existing immediately after the merger, plus the number of participating memberships issuable as a result of the merger will not exceed the total number of participating memberships existing immediately before the merger by more than 90 percent.

I take that to mean that the number of voting entities or voting members following the merger should not exceed the number of voting members prior to the merger by more than 20 percent and that the total number of memberships (presumably common stock and preferred shares) would not exceed the number of participating memberships existing before the merger by more than 90 percent. In

other words, if we have common stock of 2400 at this time, preferred stock should not exceed more than 190 percent of the 2400 of current stock.

Returning to the original paragraph of this statute, §10-11103, paragraph G states that unless the above-described four conditions exist, action by members of the surviving corporation would be required. This would imply that the proposed members of the proposed new corporation would have to vote on the plan of merger. If the state and the IRS should recognize this reorganization as a merger, there is no doubt that the members of the surviving company would vote to not approve Articles of Incorporation and bylaws ("action" is not defined), ~~but~~ and would not approve the issuance of preferred shares in the manner proposed by the board.

Indeed, the only way the issuance of preferred shares would make sense and, indeed, an issuance of preferred shares would probably, if done correctly, be an asset to the company, would be if done in the following manner; whereby one preferred share should be assigned/given to the current owner of any common share at this time. In other words, the owner of one acre who currently holds one share of common stock would receive one share of preferred stock; the owner of 500 acres, currently owner of 500 shares of common stock, would

receive 500 shares of preferred stock. In that way, dividends would be distributed in the same proportion that the landowner has contributed over the years, since the assessments have always been per acre.

Upon condemnation and dissolution, the proceeds of compensation would be distributed in the same way, again, proportionate to the amount to which each landowner has contributed over the years. This should meet with the IRS's requirements that the interests of the existing shareholders are maintained.

Another condition for a tax-exempt reorganization is that control of the company must remain in the hands of the same shareholders who have shares in the original company. By granting voting power to the owners of preferred shares, as already planned and described, both by Mr. Brophy in the memorandum and in the Proposed Restated Articles of Incorporation and new bylaws, the existing shareholders would lose control. The board would decide, on its own, whether or not to grant the owners of preferred shares voting rights.

Since the board members are the most likely buyers of the preferred shares, or recipients of the preferred shares, it is expected that they would give themselves voting power. Thus, control of the company by the existing shareholders would be completely lost. In particular, one should consider that the applicant is

submitting a Proposed Restated Articles of Incorporation which include the issuance of 10 million shares of common stock and 10 million shares of preferred stock.

The specifics of distribution upon dissolution of a non-profit have been addressed previously and I will only allude to them here briefly because I have no doubt that this will stand up in any court of law, and if we have not been able to convince the court, I can only refer the court again to A.R.S. §10-11405, which clearly states that a nonprofit may transfer its assets to its members on dissolution.

Again, the Corporation Commission is free to ask for an attorney general's opinion on this matter, but common sense would seem to dictate that there is no property in this state that is not owned by somebody. If Adaman were to cease to exist today, the assets of Adaman would not go to the state; the assets of Adaman would not go to Mr. Brophy or Ms. Van Quathem; the assets of the company would not go to the Board of Directors; but rather the assets, after satisfaction of outstanding obligations, et cetera, would be distributed to the members to the same extent that each member has an interest in the company.

Assessments have always been per acre and no one disputes and no one is asking for any more than their fair share of the equity of the company.

The reasons given for the possible need for

issuance of preferred shares, that of being able to raise additional funds for additional development, et cetera, or the assertion made, rings hollow, in that with six wells operational, Adaman will be taking in $780,000 a year, at no additional cost to itself; with seven wells operating, Adaman will be taking in $910,000 a year, again, at no cost to itself, since Goodyear will pay for all the administrative expenses, maintenance expenses, et cetera, of the wells, which it will be using. The figures quoted above are net to the company. This is based on Mr. Scofield's statement to the court on August 17th, that each well would be expected to bring $130,000 of income to the company. Thus, one can see a need for preferred shares, but only to dispose of excess income, not necessarily to grow the company.

Surely, those members of the board who are planning on leaving are not planning on continuing to grow the company, since it is doubtful that they have any plans to remain involved with the company at all. Those of us who remain, however, would like to consider additional amenities to the community, such as wastewater treatment for those parcels that are considered zoned commercial.

Some of the current shareholders have also discussed a spin-off of a solar-producing facility, since all of our acreage is large and much of the acreage is

very restricted in its use because of the proximity to Luke Air Force Base and the F-35s which are expected in a few years. It will be almost impossible for residents to continue living with the F-35s. Converting the land to solar collection would be one means of increasing property values, but also would make a fair and productive use of the land, not only for the interests of the members, but the community at large.

In closing, because of the period of time between the date of the vote and September 2010, the vote should be held to be null and invalid. With additional information, in particular with the additional information which was specifically withheld from the voters at the time, there is no doubt that a significant proportion of the votes for the Plan of Reorganization would be reversed if taken at this time.

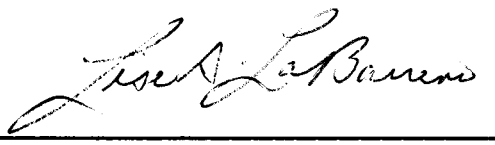
The instrument used by the applicant in its application, Exhibit 1, the agreement and Plan of Reorganization is significantly incorrect and different from that which was signed by the voters on 4/7/09, and because of the many points enumerated above, the application for issuance of stock should be denied at this time.

The court is, of course, at leisure to order a special meeting, per §10-3703. This meeting should be

held after consultation with outside counsel (other than the board's counsel), with respect to the proposed reorganization, and a vote would be under the appropriate conditions (eligibility, access to members' lists, et cetera) could be taken again. If everyone agrees to the outcome of the meeting, the approval of issuance of stock could then be done rather quickly.

In any case, the holders of common stock are not relinquishing their equity in the company, and at this time a separate reorganization is contemplated in the fashion which would be acceptable to the state and the IRS, with the above situation concerning preferred shares, i.e., that one share be issued per share of common stock.

Respectfully submitted, this 23rd day of September, 2010.



LISE A. LaBARRE

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Exhibit 1

Application for Approval to Issue Stock, coverpage; and pages 1 and 2 of the Appended Agreement, which is incorrect in that it does not reflect the language of the vote submitted to the membership, that being an "Amended" vote, with differences as to "Effective Time", adding certain conditions and limitations.

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Arizona Corporation Commission
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF ADAMAN MUTUAL WATER COMPANY FOR APPROVAL TO ISSUE STOCK

Docket No. W-01997A-09-0297

FIRST AMENDED APPLICATION FOR APPROVAL TO ISSUE STOCK PURSUANT TO THE AGREEMENT AND PLAN OF REORGANIZATION

Adaman Mutual Water Company ("Adaman"), an Arizona non-profit corporation, pursuant to Ariz. Rev. Stat. ("A.R.S.") §§ 40-301 and 40-302, submits this Amended Application requesting the Commission's approval of Adaman's Agreement and Plan of Reorganization, as amended, (the "Plan of Reorganization"), to be effective as of January 1, 2010,[1] and the approval of Adaman's issuance of 2,486.68 shares of common stock in conjunction with Adaman's Plan of Reorganization as a for-profit Arizona corporation. (A true

[1]Adaman requests that the order issued by the Commission approving the Plan of Reorganization be effective as of January 1, 2010, in order to avoid filing two tax returns for 2009, and to simplify accounting and financial record keeping. If the Commission's order were to become effective during 2009, Adaman would have a short tax year as a non-profit corporation and a short tax year as a for-profit corporation.

A-1

AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION ("Agreement"), is entered into as of the 7th day of April, 2009, by and between Adaman Mutual Water Company, an Arizona nonprofit corporation (the "Corporation") and the members of the Corporation ("Members").

Recitals

A. The Corporation was incorporated on November 23, 1943, as a nonprofit corporation under the laws of the state of Arizona.

B. The Corporation's primary purpose is to construct and operate a water distribution system for the delivery of water to its Members. The land described below, and any additional property annexed by the Corporation in accordance with the Corporation's Articles of Incorporation, Bylaws and any rules or regulations adopted by the Corporation, less any property condemned by applicable governmental authority or otherwise removed from its service areas, shall be known as the Adaman Reclamation Project. The Members currently own interests in the Corporation in proportion to the number of acres of real property within the following described area.

> The East Half of Section 1, 12 and 13, Township 2 North, Range 2 West, of the Gila and Salt River Base and Meridian, and Sections 6, 7 and 18, Township 2 North, Range 1 West, of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona, containing 2,880 acres more or less, except any and all parcels owned by the federal government (hereinafter, the foregoing area is referred to as the "Project").

C. The Corporation has filed tax returns as a tax-exempt mutual irrigation organization under Section 509(c)(12) of the Internal Revenue Code of 1986 (the "Code"), as amended.

D. The Board of Directors of the Corporation has determined that due to changes in the manner in which the Corporation conducts its business, the Corporation will likely lose its status as a tax-exempt organization, and that the Corporation would better serve the interests of its Members by reorganizing pursuant to the provisions of Section 368(a)(1)(E) of the Code to become a taxable "C" corporation.

E. Accordingly, the Board of Directors has determined that it is in the best interest of the Corporation and its Members to submit this Agreement to the Members for their consideration and action.

F. At the Effective Time of this Agreement, the Membership Interests in the Corporation held by the Members will be automatically converted to shares of the Corporation's no par value Common Stock (the "Shares") in accordance with the terms and conditions of the Amended and Restated Articles of Incorporation attached hereto as Exhibit A, so that each

Member shall receive in uncertificated form, that number of shares of Common Stock that are equal to the number of whole and fractional acres (rounded to two decimal places) of real property owned by such Member within the Project, and the Membership Interest shall be extinguished.

G. This Agreement does not affect any rights of members of the Adaman Irrigation Water Delivery District.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and in the Exhibits hereto, the Corporation and the Members hereby agree as follows:

Agreement

1. ***Amendment of Articles of Incorporation.*** Upon approval of this Agreement by a two thirds (2/3) majority of votes cast by the Corporation's Members, the Members shall be deemed to have approved and authorized the filing of the Amended and Restated Articles of Incorporation attached hereto as Exhibit A. Such Amended and Restated Articles of Incorporation shall be executed by the President and Secretary of the Corporation, and shall be filed with the Arizona Corporation Commission ("ACC") promptly following approval of this Agreement by the Members. Such Amended and Restated Articles of Incorporation shall be the Corporation's Articles of Incorporation until such time as such Articles are fully amended.

2. ***Amendment of Bylaws.*** At the Effective Time, the Corporation's Second Amended and Restated Bylaws, attached hereto as Exhibit B, shall constitute the Bylaws of the Corporation, and the approval of this Agreement by a two thirds (2/3) majority of the Members' votes cast shall constitute the Members' ratification of the Amendment and Restatement of the Bylaws.

3. ***Board of Directors.*** At the Effective Time, the duly elected members of the Board of Directors shall continue to be the directors of the Corporation, and shall continue to serve for the term set forth in the Corporation's Bylaws until their successors are duly qualified and elected.

not voted on

4. ***Effective Time.*** This Agreement shall become effective upon the last to occur of: (i) approval of this Agreement by the Board of Directors of the Corporation; (ii) approval of this Agreement by a two thirds (2/3) majority of the votes cast by the Members of the Corporation; or (iii) the filing of the Amended and Restated Articles of Incorporation with the ACC (the "Effective Time").

5. ***Name.*** At the Effective Time, the name of the Corporation shall continue to be Adaman Mutual Water Company.

6. ***Exchange of Membership Interests for Common Stock.*** At the Effective Time, without any action on the part of any Member or of the Corporation, each issued and outstanding Membership interest in the Corporation shall be deemed to have been exchanged for that number of shares of Common Stock specified in the Amended and Restated Articles of Incorporation so that each former Member of the Corporation shall become the owner of that number of shares of Common Stock that is equal to the number of whole and fractional acres (rounded to two

Exhibit 1

Agreement, as voted upon by the membership, 4/7/09

FIRST AMENDMENT TO AGREEMENT AND PLAN OF REORGANIZATION

THIS FIRST AMENDMENT TO AGREEMENT AND PLAN OF REORGANIZATION ("First Amendment") is entered into as of the 7th day of April, 2009, by and between Adaman Mutual Water Company, an Arizona nonprofit corporation (the "Corporation") and the members of the Corporation ("Members").

Recitals

A. The Corporation was incorporated on November 23, 1943 as a nonprofit corporation under the laws of the State of Arizona.

B. The Corporation and the Members entered into that certain Agreement and Plan of Reorganization effective as of April 7th, 2009 ("Agreement"), pursuant to which the Corporation converted from a nonprofit to a for-profit corporation.

C. The Corporation and the Members wish to amend the Agreement pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth in this First Amendment, the Corporation and the Members hereby agree as follows:

Amendment

1. Effective Time. Section 4 of the Agreement is deleted in its entirety and the following substituted therefore:

> 4. ***Effective Time***. This Agreement shall become effective upon the last to occur of: (i) approval of this Agreement by the Board of Directors of the Corporation; (ii) approval of this Agreement by a two thirds (2/3) majority of the votes cast by the Members of the Corporation; (iii) the filing of the Amended and Restated Articles of Incorporation with the ACC, or (iv) approval of this Plan and the transactions contemplated hereby by the ACC; provided that in no event shall the Plan become effective, unless an order is entered by the ACC, as required by law, authorizing the Plan and the transactions contemplated hereby (the "Effective Time").

Voted on

2. Effect of First Amendment. Unless otherwise defined in this First Amendment, all capitalized terms shall have the same meaning set forth in the Agreement. All terms and conditions of the Agreement which are not contrary to this First Amendment, shall remain in full force and effect, and are incorporated herein by this reference. This First Amendment shall control over any contrary or inconsistent terms in the Agreement.

This First Amendment was APPROVED and EXECUTED by the Members of the Corporation as of the date first written above.

ADAMAN MUTUAL WATER COMPANY
16251 W. Glendale Avenue
Litchfield Park, AZ 85340
Telephone 623 935-2837

April 7, 2009

Members of Adaman Mutual Water Company

Re: First Amendment to Agreement and Plan of Reorganization

Dear Member:

You have previously received from the Board of Directors (the "Board") of Adaman Mutual Water Company (the "Company") materials addressing the proposed Agreement and Plan of Reorganization (the "Plan") that will reorganize the Company from a nonprofit, tax exempt corporation to a regular corporation, that is not tax exempt.

The Board originally did not anticipate that approval of the Plan by the Arizona Corporation Commission ("ACC") would be required. Since mailing our proxy information, the Board has been advised by its legal counsel that the ACC must approve the Plan, and the transactions contemplated thereby. To implement the Plan, the ACC must issue an order authorizing the Company to issue the stock in exchange for Membership Interests.

At today's meeting, the Board will be proposing that the Company's members approve a First Amendment to the Plan (the "First Amendment"). The First Amendment provides that the Plan will not become effective until it is approved by the ACC. A copy of the First Amendment is attached to this letter for your review. The First Amendment will be considered and voted on only after the Plan is approved. The Board does not anticipate that the ACC will disapprove the Plan. The Plan and the First Amendment must be approved by a 2/3 majority of the Member votes cast, or a majority of the voting power, whichever is less.

Very truly yours,

Henry C. Conklin, President

Exhibit 3

Memorandum of 4/3/09, previously submitted in file, added for convenience of the reader. Too many misstatements to address, not relevant (misstatements, misrepresentations); only relevance is assurance that ACC had to approve the Plan of ReOrganization

MEMORANDUM

Date: April 3, 2009

To: Members, Adaman Mutual Water Company

From: Board of Directors, Adaman Mutual Water Company

Subject: Adaman Mutual Water Company: Response to Letter from Lisa LaBarre, M.D.

This memorandum responds to issues raised in a letter sent to the Members of Adaman Mutual Water Company (the "Company") by Lisa LaBarre, M.D. Dr. LaBarre's letter is misleading and in a number of respects either misunderstands or mischaracterizes the reasons the Board of Directors (the "Board") has recommended the Company be reorganized as a for-profit corporation. The Q&A's the Board distributed to Members were intended to address the very issues that Dr. LaBarre has raised. To assist members in better understanding why we have recommended that the Plan of Reorganization be adopted, we have directed that the following information be sent to each Member.

Q1: What are the reasons the Board has recommended changing the Company from a nonprofit corporation to a for-profit corporation?

A: As presently organized, the Company cannot make distributions to its Members. The Company can only deliver water to persons located within the Project Area the Company services. The Company cannot even become a cooperative. If the Company's water facilities were to be condemned, Members would be unable to participate in or benefit from condemnation proceeds. The Company would also be unable to contract with the City of Goodyear to sell excess water. For these reasons, we believe that the change is necessary. We believe it is possible that at some point in the future, the Company's facilities may be condemned and in that event, its Members should benefit.

Q2: Will the proposed changes give Members fewer rights than they have today?

A: No. Members will have greater rights under the reorganized Company. As the Company is currently organized, Members do not have the right to exercise cumulative voting for the election of directors. Each Member has as many votes as the Member owns acres within the project. If the new Plan of Reorganization is approved, Members will be able to cumulate their votes in the election of directors.[1]

Q3: Why does the reorganized Company allow the shareholders one vote per acre?

[1] This gives minority members greater voting rights when it comes to the election of directors.

A: Historically, the Company's charter documents (Articles of Incorporation and Bylaws) have provided one vote per acre of land owned within the Project Area. This is the same method of voting that applies to the Salt River Project and to many other agricultural districts. If the Company is reorganized from a nonprofit to a for-profit corporation, I.R.S. rules require that there must be a continuity of interest in order for the reorganization to be tax-free. By maintaining the same one vote per acre structure, that continuity of interest is preserved for tax purposes, thus helping to assure that the reorganization is tax-free. If Dr. LaBarre's suggestions were adopted, the Company would likely not be able to effect a tax-free reorganization. I never made any suggestion.

Q4: What Bylaws govern the business of the Company?

A: Dr. LaBarre incorrectly states that the Company is operating under its old Bylaws. The Company's old Bylaws, as well as the new Bylaws, allow the Board to amend, repeal and adopt new Bylaws. This is true for most corporations. The Board has adopted new Bylaws. In an effort to keep Members advised of the Board's actions, we elected to submit those Bylaws to the Members and to have the Members ratify the Bylaws adoption. This was not required by law. Dr. LaBarre is criticizing us for being open with the Members of the Company.

Q5: If the Plan of Reorganization is adopted, will the Company be authorized to issue Preferred Bonds?

A: Dr. LaBarre's letter incorrectly states that the Plan of Reorganization would allow the Company to issue Preferred Bonds. Bonds are debt, not equity. Preferred Stock has rights that are lesser than and subordinate to, debt. The Plan of Reorganization would allow the Company to issue Preferred Stock, which is a form of equity. The Company would only issue Preferred Stock if it needed to do so to finance the development and build out of its water system or make other capital improvements. Virtually all corporations that are "for profit" have the ability, by law, to issue Preferred Stock, as long as the Company's articles of incorporation so provide. Our legal counsel suggested that we have this right in the event it might be necessary in the future. There is nothing unusual in providing that the Company may issue Preferred Stock if the Board determines it is appropriate to do so. This is the same function that a Board performs in any company, including some of the largest in the country.

Only? more likely to distribute dividends)

Q6: Dr. LaBarre's letter seems to assume that shares of common stock may be transferred separate from the land. Is this correct? not in my letter at all - attempt to discredit

A: No. Shares of common stock of the Company can only be transferred *with* the land. The Board is authorized to determine whether Preferred Stock, if ever issued, will be subject to the same restrictions.

Q7: If the Plan of Reorganization is approved, what role will the Arizona Corporation Commission ("ACC") play?

A: If the Plan of Reorganization is approved, the Company will still be subject to the jurisdiction of the ACC. In fact, our legal counsel has told us that the ACC must approve the Plan of Reorganization before it can be implemented. Consequently, if the Plan is approved, we will submit the Plan to the ACC for its approval. The ACC will want to assure that the rates charged for delivery of the Company's water are fair, and if the Company is able to profit from the contract with Goodyear, the ACC will likely require that the Company reduce its rates to water users. Thus, there will be no change in the manner in which the Company is regulated, and the Company may, in fact, be subject to more stringent regulation.

Q8: Dr. LaBarre's letter suggests that the Board conducts business in secret. Is this accurate?

A: No. The Board conducts business in the manner that every other board of a corporation conducts business. This means that the Board sets forth an agenda, votes on those matters, and periodically sends reports to the Members regarding the action taken by the Board. There is an open nomination process for naming director nominees.

Q9 Dr. LaBarre characterizes the past vacancies on the Board and change in the size of the Board from seven to five as tightening of control. Why were there vacancies, and why the change?

A: The Board has had difficulty finding others to serve as directors. Due to this difficulty, the new Bylaws provide for five, instead of seven directors, in order to avoid having continual vacancies. Under the proposed Amended and Restated Articles of Incorporation, however, the Bylaws may be amended to increase the number of directors up to thirteen, where under the old Articles of Incorporation the Board may only have a maximum of seven directors.

Q10: Why does Dr. LaBarre suggest that a member derivative suit might be appropriate?

A: Dr. LaBarre's suggestion that a member derivative suit might be appropriate is difficult to understand. What the Board is asking the Members to do is to approve the Plan of Reorganization. *If the Plan of Reorganization is approved, it will only be with the Member's consent.* Any derivative suit would apparently be aimed at preventing the Members from considering and voting upon the Plan of Reorganization and would simply deny Members their rights. (?) Illogical statement

Derivative suits are difficult to bring, expensive and frequently benefit no one but the lawyers. We simply do not understand Dr. LaBarre's comments in this regard.

Exhibit 4

Proxy Ballot used for 4/7/09 Vote, valid for 11 months

PROXY
ANNUAL MEETING OF MEMBERS
April 7, 2009

Adaman Mutual Water Company
16251 West Glendale Avenue
Litchfield Park, Arizona 85340

THIS PROXY IS SOLICTED ON BEHALF OF THE BOARD OF DIRECTORS OF ADAMAN MUTUAL WATER COMPANY

The undersigned hereby appoints Stan Ashby and Kelvin Moss, and each of them, as proxies of the undersigned, with the power of substitution, who may act together or alone to vote as designated below, or if no designation is made, then to exercise discretion to vote the membership interests (the "Interests") of Adaman Mutual Water Company (the "Company"), which the undersigned is entitled to vote, at the Annual Meeting of Members to be held Tuesday, April 7, 2009, or at any adjournment thereof, for the purposes of: (i) considering and acting on a proposal to approve the Agreement and Plan of Reorganization by and between the Company and the Members of the Company, which provides for the reorganization of the Company from a nonprofit corporation to a taxable "C" corporation, and the conversion of each outstanding membership interest into shares of Common Stock of the Company upon consummation of the reorganization; and (ii) electing the Board of Directors. A vote to approve the Agreement and Plan of Reorganization is also be a vote to approve adoption of the Amended and Restated Articles of Incorporation of the Company, and to ratify adoption of the Second Amended and Restated Bylaws of the Company.

This Proxy, when properly completed, will be voted in the manner you direct. **If no designation is made, this Proxy will be voted for the approval of the Plan of Reorganization and for the election of each of the directors listed below to the Board of Directors.**

Item 1. Approval of Agreement and Plan of Reorganization and Amended and Restated Articles

The Board of Directors of the Company recommends a vote **FOR** the proposal to approve the Agreement and Plan of Reorganization and to approve the Amended and Restated Articles of Incorporation of the Company.

The Proxies are instructed to vote the Interests as follows with regard to the approval of the Agreement and Plan of Reorganization: **(Circle one)**

FOR AGAINST ABSTAIN

Exhibit 5 , in violation of 10-3720 (4)

1. ARS 10-3720
2. Denial by Mr Schofield, who signed my hand-written note, as he used the FACT law (vs commercial use of public utility mailing lists), of the "membership list", as defined in 10-3720; Mr Schofield was aware this was not for commercial use, as I had had requested same prior to meeting of 3/2/10, and had been verbally denied, the FACT ACT cited as a reason. Found out FACT ACT irrelevant to my request, requested again.

3. List of parcel numbers, acres (no specification as to whether eligible to vote or not. (10-3720 specifies "number of votes each member is entitled to vote"), along with name of owner(s) offered instead of "membership list".

   Absolutely not acceptable.

ctice § 2.200, Record Date For
Meetings.

incorporation or bylaws,
nual, regular or special
f the corporation delivers
matter.

h proposed action.

on is valid only if both:

eds the quorum required

ne number of votes that
ting at which the total
of votes cast by ballot.

eet the quorum require-

prove each matter other

red to the corporation in
three days after the date

corporation or bylaws, a

ions §§ 368 to 369, 371 to

ARTICLE 2. VOTING

§ 10–3720. Members' list for meeting

A. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all of its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting another list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting and the corporation shall prepare that list on the same basis and make it a part of the list of members.

B. For the purpose of communication with other members concerning the meeting the corporation shall make the list of members available for inspection by any member at the corporation's principal office or at another place identified in the meeting notice in the city where the meeting will be held. On written demand a member, a member's agent or a member's attorney may inspect and, subject to the limitations of § 10–11602, subsection C, and § 10–11605, may copy the list, during regular business hours and at the member's expense, during the period it is available for inspection.

C. The corporation shall make the list of members available at the meeting, and any member, a member's agent or a member's attorney may inspect the list at any time during the meeting or during any adjournment.

D. If the corporation refuses to allow a member, a member's agent or a member's attorney to inspect the list of members before or at the meeting or copy the list as permitted by subsection B of this section, the court in the county where a corporation's principal office is located, or if no principal office is located in this state, the court in the county where a corporation's known place of business is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

E. Refusal or failure to comply with this section does not affect the validity of any action taken at the meeting.

F. The articles of incorporation or bylaws of a corporation organized primarily for religious purposes may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

Added by Laws 1997, Ch. 205, § 5, eff. Jan. 1, 1999.

Historical and Statutory Notes

Reviser's Notes:

1997 Note. Pursuant to authority of § 41–1304.02, in subsection B, first sentence the words "For the purpose of communication with other members concerning the meeting" were transposed to follow "B." and in the second sentence the words "On written demand" were transposed to the beginning of the sentence and the references to "§ 10–11602" and "§ 10–11605" were substituted for the references to "§ 10–31602" and "§ 10–31605", respectively, to conform to the reviser's renumbering of those sections.

Addresses of parcels not released

2 ways to Compliance = FACT legislation (part of Privacy Act)

requirements. Mr Schofield understands that

request is not for commercial use (per "usual" + customary Public Request Forms - used by State, Cities + municipal City)

Schofield
3-11-10 11:58

Company Manager
Dave Schofield
(acting per advice of counsel, according to D.S.)

Sample page
page 1 of 13

ADAMAN I.W.D.D. # 36

Parcel Data Report by Parcel

Report Date Range From 2/20/2010 to 3/22/2010

Parcel #	# of Acres	Customer Number	Customer Name
501-02-001	0.11	ADAIRR	Adaman I.W.D.D. No. 36
501-02-002	8.22	ADAIRR	Adaman I.W.D.D. No. 36
501-02-005A	40.21	TOWCEN	Saribeth, LLC Town Cntr Cr
501-02-005B	35.40	ASHINV	Ashby Land, LLC
501-02-006A	9.39	BLALES	One Six Six Zero One W Bet
501-02-006B	28.15	BLAJAC	Jacky & Rebbecca Blake
501-02-007C	2.07	ABENOR	NBA Trust & Enterprises LT
501-02-007D	38.64	PETPET	Peter Peter Cotton Tail, LLC
501-02-007E	72.76	EVEVEG	Everkrisp Vegetable Compa
501-02-007F	0.63	CITGOO	City of Goodyear
501-02-007G	1.97	ABENOR	NBA Trust & Enterprises LT
501-02-010E	8.82	EMAMAH	Mahmoud Emadi
501-02-010G	4.75	ESPILA	Espilanda, LLC
501-02-010H	3.63	ESPILA	Espilanda, LLC
501-02-010J	20.38	SMTINV	S.M.T. Investors
501-02-010K	18.67	SMTINV	S.M.T. Investors
501-02-010L	17.24	SMTINV	S.M.T. Investors
501-03-001	0.05	ADAIRR	Adaman I.W.D.D. No. 36
501-03-002	0.06	ADAIRR	Adaman I.W.D.D. No. 36
501-03-003	5.45	ADAIRR	Adaman I.W.D.D. No. 36
501-03-004B	2.09	ROBROD	Ronald Roberts
501-03-004C	1.93	FRYMIK	Michael W. & Barbara Frye
501-03-004D	1.38	CAMCHA	Chad Campbell
501-03-004F	61.53	FREFRY	French Fryes, LLC
501-03-004G	10.97	FRYROB	Frye Family, LLLP
501-03-005A	3.01	SUNCOR	SunCor Development
501-03-005B	35.99	KAKER	Kakerlee,LLC
501-03-006A	3.75	MARJOH	John Marks
501-03-006B	67.39	PHXDRE	Phoenix Dream Works, LLC
501-03-007	36.29	FOULEA	Four Leaf Operations, LLC

13 pages of this

? "acres" - not eligible votes

Exhibit 6

Letter to Board, 11/12/08, requesting a General (Special) Meeting, prior to the vote of 4/7/09.

Purpose would have been to inform electorate, get their ideas, etc. wrt a change in corporate status.

The paragraph highlighted (*) was my attempt to find out if Commercial for-profit companies can vote or not. (ie, SRP-can't) (not in non-profit part of Co)

No direct response obtained ("no annexations planned").

Adaman Mutual Water Company

Board of Directors'Meeting

November 12, 2008

Adaman Mutual Water Company,
Board of Directors,
16251 West Glendale Avenue,
Litchfiled Park, AZ

Dear Madam, Sirs,

Having conducted a brief survey by mail of the wishes of the members/shareholders of the Adaman Water Company, I respectfully request the scheduling of a General Meeting of the membership, *prior to the final formulation of the amendments to the Bylaws.

In particular, topics which members would like to have addressed are (but not limited to):

The adoption of formal Open Meetings Laws, similar to that which government agencies are subject to.

The possible directions the Water Company may wish to address, such as the conversion to a regular for-profit corporation. If we have a valued asset, why should it not benefit the entire community? This could help preclude condemnation?

* A temporary moratorium on further annexation(s) to the Company, until we have determined how to deal with large commercial parcels so that one or two commercial entities don't determine the fate of our Company. That would of course not preclude us from selling domestic water to anyone the Company feels it can and wishes to sell to.

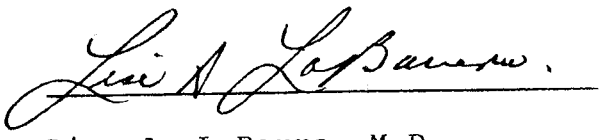
Consideration of a differential in water rates, residential vs commercial, vs industrial? (agricultural concerns, always a priority, are perhaps already addressed by AIWDD, but perhaps one could make a case for dairies to have a preferred rate, wrt their domestic water?)

Depending on commitment expressed, as well as costs incurred, consideration of holding the Yearly Meeting outside regular work hours, to encourage attendance?

May we anticipate a response within the next few weeks? Needless to say, the amendments necessary for the Goodyear project could be addressed at the same time, in order to proceed with the latter?

Respectfully submitted November 12th, 2008,

by Lise A. LaBarre, member/shareholder.



Lise A. LaBarre, M.D.

Exhibit 7

Op Att'y Gen. 62-55-L (1962)

Applicant's legal basis for Reorganizing by Amendment to the Articles of Incorporation.

Case deals with converting from"profit"to "non-profit.

Applicant presumes corollary is true.

JOHN CASEY- Originator
ANDY BAUMERT -) Concurred
AL LARSON)
CLARK KENNEDY)

May 11, 1962

Letter Opinion No. 62-55-L

REQUESTED BY: Honorable Jack Buzard, Commissioner
Arizona Corporation Commission

OPINION BY: The Attorney General

QUESTION: Can a corporation previously formed under Chapter 1, Article 2, Title 10, Arizona Revised Statutes, at a later date amend its Articles of Incorporation to conform with Chapter 1, Article 16, Title 10, Arizona Revised Statutes, and thus become a legally-constituted non-profit corporation?

CONCLUSION: Yes.

19 C.J.S. § 1584 states in part:

"Corporations may and sometimes do, effect their own reorganization, and this without being reincorporated. This may properly be accomplished by an amendment to the Corporate Charter properly approved by the requisite vote of the stockholders."

A.R.S. § 10-321 states:

§ 10-321. Amendment of articles; change in amount of capital stock; notice

Subject to the provisions of the articles of incorporation the capital stock of a corporation may be increased or decreased, and the articles of incorporation, which for the purposes of this section only, shall include any and all certificates filed pursuant to § 10-152.01, may be amended by the affirmative vote of a majority of the issued and outstanding shares of stock of the corporation. Articles of incorporation may be amended to include any provision which might lawfully be inserted in articles of incorporation filed for the first time at the date of such amendment. At least thirty days notice in writing of the proposed increase or decrease or the proposed amendment shall be given the shareholders of the corporation. As amended, Laws 1958, Ch. 22, § 3. (Emphasis supplied)

A.R.S. § 10-322 states:

§ 10-322. Formal requirements for amendment.

Amendments shall be signed and acknowledged by the president and attested by the secretary of the

62-55-L

corporation, and shall be filed, recorded and published, as required for the original articles of incorporation.

A.R.S. § 10-321, quoted above, grants to a corporation the right to amend its articles of incorporation, and A.R.S. §10-322 sets forth the formal requirements for such amendment. If the articles of incorporation are amended so as to conform with the statutory requirements of a non-profit corporation as set forth in Chapter 1, Article 16, Title 10, Arizona Revised Statutes, and such amendment is properly approved by the requisite vote of the stockholders, we are of the opinion that such corporation thus becomes a legally-constituted non-profit corporation.

Very truly yours,

ROBERT W. PICKRELL
The Attorney General

JOHN J. CASEY
Assistant Attorney General

JJC:lf
Y-271

Exhibit

ARS 10-11101 - 10-11103 (added 1999)
Merger Laws pertaining to Non-Profits, merging together or into "a business". No specifics wrt to the "business" being non-profit (ie Goodwill type) or for profit ("C" corp.).

Relevance is that IRS now treats "mergers" as ReOrganizations, and vice-versa.

Although not directly addressing a conversion from "non-profit" to "for-profit", if the "business" alluded to refers to a non-profit business, these nevertheless indicate some of the restrictions placed on non-profit mergers, wrt the number of voting members in the surviving corporation & the number of memberships allowed to participate in distributions in the surviving corporation (Preferred or other shares).

Going from 2468 current Common Stock shares to 10,000,000 and from zero Preferred Shares to 10,000,000 would not seem to be acceptable in a "merger" between a non-profit and a for-profit entity.

CHAPTER 34

MERGERS—NONPROFIT CORPORATIONS

ARTICLE 1. GENERAL PROVISIONS

Section

Chapter 34, Mergers—Nonprofit Corporations, consisting of Article 1, §§ 10–11101 to 10–11108 (added as Article 1, §§ 10–31101 to 10–31108, by Laws 1997, Ch. 205, § 5, effective January 1, 1999), was transferred for placement here and renumbered by the reviser.

ARTICLE 1. GENERAL PROVISIONS

§ 10–11101. Approval of plan of merger

A. One or more nonprofit corporations may merge into a business or nonprofit corporation if the board of directors of each corporation adopts, and, if required by § 10–11103, its members and other persons approve, a plan of merger.

B. The plan of merger shall set forth all of the following:

1. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge.

2. The terms and conditions of the merger.

3. The manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations or securities of the surviving or any other corporation or into cash or other property in whole or in part.

C. The plan of merger may set forth:

1. Amendments to the articles of incorporation of the surviving corporation.

2. Other provisions relating to the merger.

Added as § 10–31101 by Laws 1997, Ch. 205, § 5, eff. Jan. 1, 1999. Renumbered as § 10–11101.

Historical and Statutory Notes

Source:

Laws 1947, Ch. 35, § 2.
Code 1939, Supp.1952, § 53–414.
A.R.S. former § 10–458.
A.R.S. former § 10–1038.
Laws 1979, Ch. 65, § 2.
A.R.S. former § 10–2381.
Laws 1994, Ch. 223, § 15.

Reviser's Notes:

1997 Note. The above chapter and the article and sections that comprise it were added by

Laws 1997, Ch. 205, sec. 5 as §§ 10–31101 through 10–31108 and were renumbered as §§ 10–11101 through 10–11108 pursuant to authority of § 41–1304.02.

1997 Note. Pursuant to authority of § 41–1304.02, in subsection A the reference to "§ 10–11103" was substituted for the reference to "§ 10–31103" to conform to the reviser's renumbering of that section.

Cross References

Merger, general provisions, see § 10–1101.

Library References

Corporations ⇐585.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 802, 804 to 806.

Research References

Treatises and Practice Aids

6 Arizona Practice § 2.234, Mergers.

§ 10–11102. Membership exchange

A. A corporation may acquire all of the outstanding memberships of one or more classes or series of another corporation if the board of directors of each corporation adopts, and, if required by § 10–11103, its members and other persons approve, the exchange.

B. The plan of exchange shall set forth all of the following:

1. The name of the corporation whose memberships will be acquired and the name of the acquiring corporation.

2. The terms and conditions of the exchange.

3. The manner and basis of exchanging the memberships to be acquired for memberships, obligations or other interests in the acquiring or any other corporation or for cash or other property in whole or in part.

C. The plan of exchange may set forth other provisions relating to the exchange.

D. This section does not limit the power of a corporation to acquire, and a corporation has the power and authority to acquire, all or part of the memberships of one or more classes or series of another corporation through a voluntary exchange or otherwise.

Added as § 10–31102 by Laws 1997, Ch. 205, § 5, eff. Jan. 1, 1999. Renumbered as § 10–11102.

Historical and Statutory Notes

Source:

Laws 1947, Ch. 35, § 2.
Code 1939, Supp.1952, § 53–414.
A.R.S. former § 10–458.
A.R.S. former § 10–1039.
Laws 1979, Ch. 65, § 2.
A.R.S. former § 10–2382.
Laws 1994, Ch. 223, § 15.

Reviser's Notes:

1997 Note. Pursuant to authority of § 41–1304.02, in subsection A the reference to "§ 10–11103" was substituted for the reference to

"§ 10–31103" to conform to the reviser's renumbering of that section.

Cross References

Share exchange, see § 10–1102.

Library References

Corporations ⇐585.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 802, 804 to 806.

Research References

Treatises and Practice Aids

6 Arizona Practice § 2.234, Mergers.

§ 10–11103. Action on plan by board, members and third persons

A. If the members of any merging corporation or other persons are entitled to vote on or approve the plan, except as provided in subsection G of this section, after adopting a plan of merger or membership exchange, the board of directors of the corporation shall submit the plan of merger or membership exchange for approval by its members and the other persons.

B. For a plan of merger or membership exchange to be approved all of the following shall have occurred:

1. The board of directors shall recommend the plan of merger or membership exchange to the members, unless the board of directors determines that because of a conflict of interest or other special circumstances it should not make a recommendation and communicates the basis for its determination to the members with the plan.

2. The members entitled to vote on the plan of merger or membership exchange shall approve the plan.

3. Each person whose approval is required by the articles of incorporation for a merger shall approve the plan in writing.

C. The board of directors may condition its submission of the proposed merger or membership exchange on any basis.

D. If the corporation submits the transaction for member action at a membership meeting, the corporation shall notify each member of the proposed membership meeting at which the plan of merger or membership exchange is to be submitted for approval in accordance with § 10–3705. The notice shall state that the purpose or one of the purposes of the meeting is to consider the plan of merger or membership and shall contain or be accompanied by a copy or summary of the plan.

E. Unless chapters 24 through 40 of this title,[1] the articles of incorporation or the board of directors acting pursuant to subsection C of this section requires a greater vote or voting by class, the plan of merger or membership exchange to be authorized shall be approved by a majority of the votes cast or a majority of the voting power of the class, whichever is less.

F. Voting by a class of members is required on a plan of merger or membership exchange if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under § 10–11004 or 10–11022. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

G. Unless the articles of incorporation otherwise require, action by the members of the surviving corporation on a plan of merger is not required if all of the following conditions exist:

1. The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in § 10–11002, from its articles of incorporation before the merger.

2. Each member of the surviving corporation who was a member immediately before the effective date of merger will hold the same number of memberships with identical designations, preferences, limitations and relative rights immediately after the effective date of merger.

3. The number of voting members existing immediately after the merger, plus the number of voting memberships issuable as a result of the merger, will not exceed more than twenty per cent the total number of voting memberships of the surviving corporation existing immediately before the merger.

4. The number of memberships, if any, that entitle the holders of the memberships to participate without limitation in distributions existing immediately after the merger, plus the number of participating memberships issuable as a result of the merger, will not exceed the total number of participating memberships existing immediately before the merger by more than ninety per cent.

H. At any time before the filing of the articles of merger, the plan of merger or membership exchange may be abandoned, subject to any contractual rights, without further action by the members or other persons who approved the plan, in accordance with the procedure set forth in the plan of merger or membership exchange or, if none is set forth, in the manner determined by the board of directors.

Added by as § 10–31103 Laws 1997, Ch. 205, § 5, eff. Jan. 1, 1999. Renumbered as § 10–11103.

[1] Sections 10–3101 et seq. through 10–11701 et seq.

Historical and Statutory Notes

Source:

Laws 1947, Ch. 35, § 2.
Code 1939, Supp.1952, § 53–414.
A.R.S. former § 10–458.
A.R.S. former § 10–1040.
Laws 1979, Ch. 65, § 2.
A.R.S. former § 10–2383.
Laws 1994, Ch. 223, § 15.

Reviser's Notes:

1997 Note. Pursuant to authority of § 41–1304.02, in subsection F the reference to "§ 10–11004 or 10–11022" was substituted for the reference to "§ 10–31004 or 10–31022" and in subsection G, paragraph 1 the reference to "§ 10–11002" was substituted for the reference to "§ 10–31002" to conform to the reviser's renumbering of those sections.